

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

JOHN WILLIS, et al.

No. 1:11-cr-10212-JLT-1

MOTION FOR ORDER TO STAY FORFEITURE PROCEEDINGS

Defendant John Willis (“the Defendant”), by and through undersigned counsel, hereby respectfully moves this Honorable Court for an Order staying certain forfeiture proceedings¹ commenced by the U.S. Customs and Border Protection and the Federal Bureau of Investigations (collectively, “the Government”) in connection with the instant criminal matter, pending resolution of said matter. As grounds therefor, the Defendant avers and states:

1. On information and belief, the items (“defendant property”) which are the subject of “the forfeiture actions” listed below (in Footnote 1) have been seized by the Government based upon their supposed relation to, or derivation from, alleged criminal action(s) which are the subject of the instant criminal matter.

¹ The Defendant has received notice of the following pending forfeiture proceedings in which he may have an interest in the seized property:

U.S. Customs and Border Protection Seizure Case No. 2011-0411-000051-01, \$4,100 in U.S. Currency;
FBI Seizure No. 3090110104, Asset ID No. 11-FBI-004405, 2005 Bentley Continental Coupe;
FBI Seizure No. 3090110105, Asset ID No. 11-FBI-004409, 2008 Mercedes Benz E350;
FBI Seizure No. 3090110106, Asset ID No. 11-FBI-004485, \$55,255 in U.S. Currency;
FBI Seizure No. 3090110108, Asset ID No. 11-FBI-004487, various pieces of jewelry appraised at \$60,500.02; and
FBI Seizure No. 3090110109, Asset ID No. 11-FBI-004518, 2007 Suzuki GSXR10 Motorcycle;
collectively, “the forfeiture actions”.

2. The Defendant claims an interest in the defendant property, but denies any allegation of criminal wrongdoing which would subject the defendant property to forfeiture.

3. The Defendant asserts that the alleged facts relied upon by the Government in seeking forfeiture of the defendant property are properly the subject of the criminal matter, and are rightfully subjected to a test of veracity by a jury. As such, the Defendant specifically requests a stay of any hearing or other proceedings on the Government's forfeiture actions pending the outcome of the criminal matter, pursuant to 18 U.S.C. § 981(g)(2) , which states in pertinent part:

Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that—

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

4. The Defendant asserts that any statements or disclosures made related to the forfeiture actions prior to complete adjudication of the instant criminal matter may implicate and/or have a direct effect upon the criminal matter. While the Defendant denies the allegations of criminal wrongdoing with regard to the defendant property, and does not object to an adjudication of the forfeiture actions eventually, he does object to commencement/adjudication of the forfeiture actions prior to the resolution of the criminal matter. The basis for this objection is that any related statements or disclosures could, at best, be used to unfairly impugn credibility before the criminal matter jury and, at worst, may be used against the Defendant in support of the pending criminal allegations, and could arguably be construed as a violation of his Constitutional right to remain silent in the pending criminal matter.

5. Further, the choice between making a zealous claim against forfeiture of valuable property subject to possible further/enhanced penalties or remaining silent for fear of waiver of

Fifth Amendment privileges in the face of criminal allegations is no choice at all, and is tantamount to an impermissible taking of property without due process of law. Granting the requested stay obviates any such concerns.

6. The Defendant does not object to the defendant property remaining in the custody of the Government during the requested stay/pending the resolution of the instant criminal matter.

7. The requested stay will not unduly burden the Court or the Government. In fact, the only party negatively impacted by a stay is the Defendant, as he will bear the burden of the continued restraints placed upon the property and any benefits derived therefrom. Further, the potential penalties the Defendant faces if convicted after trial in the criminal matter far outweigh those applicable to the forfeiture actions. Deference is justly due to the criminal matter and the Defendant's rights therein. As such, it is in the interests of justice to issue an order granting a stay of the forfeiture actions until the resolution of the criminal matter.

WHEREFORE, the Defendant respectfully requests this Honorable Court grant a stay of any and all proceedings in the aforementioned forfeiture actions, pending the resolution of the instant criminal proceedings. In the alternative, the Defendant requests an order granting a ten (10) day extension of time to respond to the forfeiture actions from the date of decision on this motion.

Dated: August 23, 2011

Respectfully submitted,
JOHN WILLIS
By and through his attorneys,

/s/ R. Bradford Bailey
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Certificate of Service

I, R. Bradford Bailey, hereby certify that on this the 23rd day of August 2011, I have served all parties of record registered with ECF for this matter with a true copy of the foregoing *Motion for Order to Stay Forfeiture Proceedings* by virtue of transmitting the same to the Court via the CM/ECF system, and have served a copy upon the designated representatives of the U.S. Customs and Border Protection and the Federal Bureau of Investigation, respectively, by U.S. mail.

/s/ R. Bradford Bailey
R. Bradford Bailey